SUPREME COURT, U. S.

Supreme Court, U.S.
FILED
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E. ROBERT SEAVER, CLERK

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1969

No. 40 Original

COMMONWEALTH OF PENNSYLVANIA,

Plaintiff

v.

STATE OF NEW YORK, STATE OF FLORIDA, STATE OF OREGON, COMMONWEALTH OF VIRGINIA, and THE WESTERN UNION TELEGRAPH COMPANY,

Defendants

MOTION TO INTERVENE AS DEFENDANT (STATE OF ARIZONA)

GARY K. NELSON
Attorney General
of Arizona
159 State Capitol Building
Phoenix, Arizona 85007

LEONARD M. BELL
Of Counsel

IN THE

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Defendants

MOTION TO INTERVENE AS DEFENDANT (STATE OF ARIZONA)

The State of Arizona moves for leave to intervene as defendant in this action, in order to assert the defenses set forth in its proposed answer, a copy of which is attached hereto, on the grounds that the

State of Arizona is entitled to a portion of money orders purchased from defendant Western Union Telegraph Company on or before December, 1962, for which payment had not been effected under the Uniform Disposition of Unclaimed Property Act of Arizona, that the resolution of this action may have an effect as to the amount the State of Arizona would receive of the funds held by Western Union Telegraph Company and as such the State of Arizona has a defense to plaintiff's claim which is similar or identical to the defense of defendant State of Florida and which is common to the main action.

GARY K. NELSON
Attorney General
of Arizona

LEONARD M. BELL
Of Counsel

IN THE

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STATE OF NEW YORK, STATE OF FLORIDA, STATE OF OREGON, COMMONWEALTH OF VIRGINIA, and THE WESTERN UNION TELEGRAPH COMPANY,

Defendants

ANSWER
(STATE OF ARIZONA)

The State of Arizona, a sovereign state of the United States of America, by and through its Attorney General, for its answer to the complaint herein, says:

I.

It admits the allegations of fact in paragraph numbered I.

II.

It admits the allegations of fact in paragraph numbered II but controverts the conclusion in subparagraphs 9(f), 12 and 15 that cancellation of a money order is legally accomplished "by the paying office notifying the sending office that payment has not effected."

III.

It is without actual knowledge of the matters of fact alleged in paragraph numbered III of the complaint, but for the purposes of this litigation they are admitted except insofar as they assume an effective cancellation of money orders by

notice as noted in paragraph II of this answer.

IV.

It is without actual knowledge of the matters of fact alleged in paragraph numbered IV of the complaint, but for the purposes of this litigation they are admitted.

V.

The State of Arizona, for the purposes of its claim to the properties in question hereby adopts and repeats the allegations of fact of the plaintiff in its complaint herein insofar as the same may be applied to the rights and interests of the State of Arizona in the disposition of the issues of law raised by the complaint, based on facts therein alleged, as to the situs of the unclaimed intangible personal property described.

VI.

The Estate Tax Commissioner of the State of Arizona is charged with the administration of the Arizona Unclaimed Property Statutes, Title 44, Chapter 3.1, Arizona Revised Statutes, attached hereto as Exhibit A, enacted without subsequent amendment as Chapter 126, Section 1, Laws of Arizona 1956, in a form substantially the same as the Uniform Disposition of Unclaimed Property Act approved by the National Conference on Uniform Laws in 1955. Under this law Arizona claims it is entitled to the custody of unclaimed funds represented by the money orders in question which were sent to an Arizona destination, or those sent to a payee whose last known address shown by the books of the debtor is in Arizona, because the

right of escheat vests in the state having jurisdiction of the payee or obligee in such transactions.

WHEREFORE, the State of Arizona prays:

(1) That this Court take jurisdiction of the parties and subject matter herein;

(2) That a temporary injunction be issued restraining the defendant, The Western Union Telegraph Company, from paying, delivering, or in any manner relinquishing, the said property to any other State pending further orders of this Court;

(3) That judgment be entered that the moneys held by Western Union are subject to the escheat or custody of one or more of the following States:

(a) The State of destination of the money orders, as shown by the books and records of Western Union;

(b) The State in which a draft has been issued for the amount of the money order or the amount of the refund, as shown by the books and records of Western Union;

(c) The State of last known address of the sender of a money order, as shown by the books and records of Western Union;

(d) The State of the last known address of the payee of a draft, as shown by the books and records of Western Union;

(4) That such judgment decree that no State other than the State or States designated under (3) above has the power to escheat or custody of, or the right to prosecute a claim of escheat or custody

against, such property.

(5) That the State of Arizona have such other and further relief as this Court may deem just.

GARY K. NELSON
Attorney General
of Arizona

LEONARD M. BELL
Of Counsel

UNIFORM DISPOSITION OF UNCLAIMED PROPERTY ACT

ARTICLE 1. IN GENERAL

44-351. Definitions and use of terms

In this chapter, unless the context otherwise requires:

1. "Banking organization" means any bank, trust company, savings bank, industrial bank, land bank, safe deposit company, or a private banker engaged in business in this state.

2. "Business association" means any corporation other than a public corporation, joint stock company, business trust, partnership, or any association for business purposes of two or more individuals.

3. "Commissioner" means estate tax commissioner.

4. "Financial organization" means any savings and loan association, building and loan association, credit union, cooperative bank or investment company, engaged in business in this state.

5. "Holder" means any person in possession of property subject to this chapter belonging to another, or who is trustee in case of a trust, or is indebted to another on an obligation subject to this chapter.

6. "Life insurance corporation" means any association or corporation transacting within this state the business of insurance on the lives of persons or insurance appertaining thereto, including, but not by way of limitation, endowments and annuities.

7. "Owner" means a depositor in case of a deposit, a beneficiary in case of a trust, a creditor, claimant, or payee in case of other choses in action, or any person having a legal or equitable interest in property subject to this chapter, or his legal representative.

8. "Person" means any individual, business association, government or political subdivision, public corporation, public authority, estate, trust, two or more persons having a joint or common interest, or any other legal or commercial entity.

9. "Utility" means any person who owns or operates within this state, for public use, any plant, equipment, property, franchise, or license for the transmission of communications or the production, storage, transmission, sale, delivery, or furnishing of electricity, water, steam or gas.

44-352. Property held by banking or financial organizations

The following property held or owing by a banking or financial organization is presumed abandoned:

1. Any demand, savings, or matured time deposit made in this state with a banking organization, together with any interest or dividend thereon, excluding any charges that may lawfully be withheld, unless the owner has, within seven years, increased or decreased the amount of deposit.

2. Any funds paid in this state toward the purchase of shares or other interest in a financial organization in this state and any interest or dividends thereon, excluding any charges that may lawfully be withheld, unless the owner has within seven years:

(a) Increased or decreased the amount of the funds or presented an appropriate record for the crediting of interest or dividends; or

(b) Corresponded in writing with the financial organization concerning the funds; or

(c) Otherwise indicated an interest in the funds or deposit as evidenced by a memorandum on file with the financial organization.

3. Any funds or other personal property, tangible or intangible, removed from a safe deposit box or any other safekeeping repository or agency or collateral deposit box in this state on which the lease or rental period has expired due to nonpayment of rental charges or other reason, or any surplus amounts arising from the sale thereof pursuant to law, that have been unclaimed by the owner for more than seven years from the date on which the lease or rental period expired.

44-353. Unclaimed funds held by life insurance corporations.

A. "Unclaimed funds", as defined in this section, held and owing by a life insurance corporation shall be presumed abandoned if the last known address, according to the records of the corporation, of the person entitled to the funds is within this state. If a person other than the insured or annuitant is entitled to the funds and no address of such person is known to the corporation or if it is not definite and certain from the records of the corporation what person is entitled to the funds, it is presumed that the last known address of the person entitled to the funds is the same as the last known address of the insured or annuitant according to the records of the corporation.

B. "Unclaimed funds", as used in this section, means all monies held and owing by any life insurance corporation unclaimed and unpaid for more than seven years after the monies become due and payable as established from the records of the corporation under any life or endowment insurance policy or annuity contract which has matured or terminated. A life insurance policy not matured by actual proof of the death of the insured is deemed to be matured and the proceeds thereof are deemed to be due and payable if such policy was in force when the insured attained the limiting age under the mortality table on which the reserve is based, unless the person appearing entitled thereto has within the preceding seven years assigned, readjusted, or paid premiums on the policy, or subjected the policy to loan, or corresponded in writing with the life insurance corporation concerning the policy. Monies otherwise payable according to the records of the corporation are deemed due and payable although the policy or contract has not been surrendered as required.

44-354. Deposits and refunds held by utilities

The following funds held or owing by any utility are presumed abandoned:

1. Any deposit made by a subscriber with a utility to secure payment for, or any sum paid in advance for, utility services to be furnished in this state, less any lawful deductions, that has remained unclaimed by the person appearing on the records of the utility entitled thereto for more than seven years after the termination of the services for which the deposit or advance payment was made.

2. Any sum which a utility has been ordered to refund and which was received for utility services rendered in this state, together with any interest thereon, less any lawful deductions, that has remained unclaimed by the person appearing on the records of the utility entitled thereto for more than seven years after the date it became payable in accordance with the final determination or order providing for the refund.

44-355. Undistributed dividends and distributions of business associations

Any stock certificate or other certificate of ownership, or any dividend, profit, distribution, interest, payment on principal, or other sum for which a negotiable instrument has not been issued and delivered in payment held or owing by a business association for or to a shareholder, certificate holder, member, bondholder, or other security holder, or a participating patron of a cooperative, who has not claimed it, or corresponded in writing with the business association concerning it, within seven years after the date prescribed for payment or delivery, is presumed abandoned if:

1. It is held or owing by a business association organized under the laws of or created in this state; or

2. It is held or owing by a business association doing business in this state, but not organized under the laws of or created in this state, and the records of the business association indicate that the last known address of the person entitled thereto is in this state.

44-356. Property of business associations and banking or financial organizations held in course of dissolution

All intangible personal property distributable in the course of a voluntary dissolution of a business association, banking organization, or financial organization organized under the laws of or created in this state, that is unclaimed by the owner within two years after the date for final distribution, is presumed abandoned.

44-357. Property held by fiduciaries

All intangible personal property and any income or increment thereon, held in a fiduciary capacity for the benefit of another person is presumed abandoned unless the owner has, within seven years after it becomes payable or distributable, increased or decreased the principal, accepted payment of principal or income, corresponded in writing concerning the property, or otherwise indicated an interest as evidenced by a memorandum on file with the fiduciary:

1. If the property is held by a banking organization or a financial organization, or by a business association organized under the laws of or created in this state; or

2. If it is held by a business association, doing business in this state, but not organized under the laws of or created in this state, and the records of the business association indicate that the last known address of the person entitled thereto is in this state; or

3. If it is held in this state by any other person.

44-358. Property held by state courts and public officers and agencies

All personal property, tangible or intangible, held for the owner by any court, public corporation, public authority, or public officer of this state, or a political subdivision thereof, that has remained unclaimed by the owner for more than seven years is presumed abandoned.

44-359. Miscellaneous personal property held for another person

All personal property, tangible or intangible, not otherwise covered by this chapter, including any income or increment thereon and deducting any lawful charges, that is held or owing in this state in the ordinary course of the holder's business and has remained unclaimed by the owner for more than seven years after it became payable or distributable is presumed abandoned.

44-360. Reciprocity for property presumed abandoned or escheated under the laws of another state

If specific property which is subject to the provisions of sections 44-352, 44-355, 44-356, 44-357 and 44-359 is held for or owed or distributable to an owner whose last known address is in another state by a holder who is subject to the jurisdiction of that state, the specific property is not presumed abandoned in this state and subject to this chapter if:

1. It may be claimed as abandoned or escheated under the laws of such other state; and

2. The laws of such other state make reciprocal provision that similar specific property is not presumed abandoned or escheatable by such other state when held for or owed or distributable to an owner whose last known address is within this state by a holder who is subject to the jurisdiction of this state.

44-361. Report of abandoned property

A. Every person holding funds or other property, tangible or intangible, presumed abandoned under this chapter shall report to the commissioner with respect to the property not previously reported as hereinafter provided.

B. The report shall be verified and shall include:

1. The name, if known, and last known address, if any, of each person appearing from the records of the holder to be the owner of any property of the value of five dollars or more presumed abandoned under this chapter;

2. In case of unclaimed funds of life insurance corporations, the full name of the insured or annuitant and his last known address according to the life insurance corporation's records;

3. The nature and identifying number, if any, or description of the property and the amount appearing from the records to be due, except that items of value under five dollars each may be reported in aggregate;

4. The date when the property became payable, demandable, or returnable, and the date of the last transaction with the owner with respect to the property.

C. If the person holding property presumed abandoned is a successor to other persons who previously held the property for the owner, or if the holder has changed his name while holding the property, he shall file with his report all prior known names and addresses of each holder of the property.

D. The report shall be filed before November 1 of each year as of June 30 next preceding, but the report of life insurance corporations shall be filed before May 1 of each year as of December 31 next preceding. The commissioner may postpone the reporting date upon written request by any person required to file a report.

E. Verification, if made by a partnership, shall be executed by a partner; if made by an unincorporated association or private corporation, by an officer; and if made by a public corporation, by its chief fiscal officer.

F. The initial report filed under this chapter shall include all items of property that would have been presumed abandoned if this chapter had been in effect during the seven-year period preceding its effective date and provided that no items of a value of twenty-five dollars or less shall be included in such initial report.

44-362. Notice and publication of lists of abandoned property

A. Within one hundred twenty days from the filing of the report required by section 44-361, the commissioner shall cause notice to be published at least once each week for two successive weeks in an English language newspaper of general circulation in the county in this state in which is located the last known address of any person to be named in the notice. If no address is listed or if the address is outside this state, the notice shall be published in the county in which the holder of the abondoned property has his principal place of business within this state.

B. The published notice shall be entitled "Notice of Names of Persons Appearing to be Owners of Abandoned Property," and shall contain:

1. The names in alphabetical order and last known addresses, if any, of persons listed in the report and entitled to notice within the county as hereinbefore specified.

2. A statement that information concerning the amount or description of the property and the name and address of the holder may be obtained by any persons possessing an interest in the property by addressing an inquiry to the commissioner.

3. A statement that if proof of claim is not presented by the owner to the holder and if the owner's right to receive the property is not established to the holder's satisfaction within sixty-five days from the date of the second published notice, the abandoned property will be placed not later than eighty-five days after such publication date in the custody of the commissioner to whom all further claims must thereafter be directed.

C. The commissioner is not required to publish in such notice any item of less than twenty-five dollars unless he deems such publication to be in the public interest.

D. Within one hundred twenty days from the receipt of the report required by section 44-361, the commissioner shall mail a notice to each person having an address listed therein who appears to be entitled to property of the value of twenty-five dollars or more presumed abandoned under this chapter. The mailed notice shall contain:

1. A statement that, according to a report filed with the commissioner, property is being held to which the addressee appears entitled.

2. The name and address of the person holding the property and any necessary information regarding changes of name and address of the holder.

3. A statement that, if satisfactory proof of claim is not presented by the owner to the holder by the date specified in the published notice, the property will be placed in the custody of the commissioner to whom all further claims must be directed.

44-363. Payment or delivery of abandoned property

Every person who has filed a report as provided by section 44-361 shall within twenty days after the time specified in section 44-362 for claiming the property from the holder pay or deliver to the commissioner all abandoned property specified in the report, except that, if the owner establishes his right to receive the abandoned property to the satisfaction of the holder within the time specified in section 44-362, or if it appears that for some other reason the presumption of abandonment is erroneous, the holder need not pay or deliver the property, which will no longer be presumed abandoned, to the commissioner, but in lieu thereof shall file a verified written explanation of the proof of claim or of the error in the presumption of abandonment.

44-364. Relief from liability by payment or delivery

The payment of money or the delivery of property to the commissioner by any holder shall terminate any legal relationship between the holder and the owner and shall release and discharge such holder from any and all liability to the owner, his heirs or assigns by reason of such delivery or payment, and such delivery and payment may be pleaded as a bar to recovery and be a conclusive defense in any suit or action brought by such owner, his heirs or assigns or any claimant against the holder by reason of such delivery. The state shall reimburse any holder who cannot be relieved of such liability by this section for all liability to the owner, his heirs and assigns incurred by reason of compliance with this chapter, but nothing contained in this section shall be deemed or construed as an assumption by the state or the commissioner of any liability of the holder to the owner upon a cause of action arising prior to said delivery, nor as depriving such owner, his heirs or assigns of the right of redemption provided for in this chapter.

44-365. Income accruing after payment or delivery

When property is paid or delivered to the commissioner under this chapter, the owner is not entitled to receive income or other increments accruing thereafter.

44-365.01. Periods of limitation not a bar

The expiration of any period of time specified by statute or court order, during which an action or proceeding may be commenced or enforced to obtain payment of a claim for money or recovery of property, shall not prevent the money or property from being presumed abandoned property, nor affect any duty to file a report required by this chapter or to pay or deliver abandoned property to the commissioner. Added Laws 1959, Ch. 23, 1.

44-366. Sale of abandoned property

A. All abandoned property other than money delivered to the commissioner under this chapter shall within one year after delivery be sold by him to the highest bidder at public sale in whatever city in the state affords in his judgment the most favorable market for the property involved. The commissioner may decline the highest bid and reoffer the property for sale if he considers the price bid insufficient. He need not offer any property for sale if, in his opinion, the probable cost of sale exceeds the value of the property.

B. Any sale held under this section shall be preceded by a single publication of notice thereof, at least three weeks in advance of sale in an English language newspaper of general circulation in the county where the property is to be sold.

C. The purchaser at any sale conducted by the commissioner pursuant to this chapter shall receive title to the property purchased, free from all claims of the owner or prior holder thereof and of all persons claiming through or under them. The commissioner shall execute all documents necessary to complete the transfer of title.

44-367. Deposit of funds

A. All funds received under this chapter, excepting funds provided for by section 8, article 11, constitution of Arizona, but including the proceeds from the sale of abandoned property under § 44-366, shall forthwith be deposited with the state treasurer to be credited to a clearing account from which he shall make prompt payment of claims duly allowed by him as hereinafter provided. Before making the deposit he shall record the name and last know address of each person appearing

from the holders' reports to be entitled to the abandoned property and of the name and last known address of each insured person or annuitant, and with respect to each policy or contract listed in the report of a life insurance corporation, its number, the name of the corporation, and the amount due. The record shall be available for public inspection at all reasonable business hours. The funds remaining in the clearing account shall be credited to the general fund of the state at the end of each fiscal year unless the constitution or some other law specifically provides otherwise for the disposition of the particular proceeds.

B. Before making any deposit to the credit of the general fund or other fund, the commissioner may deduct:

1. Any costs in connection with sale of abandoned property,

2. Any costs of mailing and publication in connection with any abandoned property, and

3. Reasonable service charges. As amended Laws 1959, Ch. 24, § 1.

44-368. Claim for abandoned property paid or delivered

Any person claiming an interest in any property delivered to the state under this chapter may file a claim thereto or to the proceeds from the sale thereof on the form prescribed by the commissioner.

44-369. Determination of claims

A. The commissioner shall consider any claim filed under this chapter and may hold a hearing and receive evidence concerning it. If a hearing is held, he shall prepare a finding and a decision in writing on each claim filed, stating the substance of any evidence heard by him and the reasons for his decision. The decision shall be a public record.

B. If the claim is allowed, the commissioner shall make payment forthwith. The claim shall be paid without deduction for costs of notices or sale or for service charges.

44-370. Judicial action upon determinations

Any person aggrieved by a decision of the commissioner or as to whose claim the commissioner has failed to act within ninety days after the filing of the claim, may commence an action in the superior court to establish his claim. The proceeding shall be brought within ninety days after the decision of the commissioner or within one hundred eighty days from the filing of the claim if the commissioner fails to act.

44-371. Election to take payment or delivery

The commissioner, after receiving reports of property deemed abandoned pursuant to this chapter, may decline to receive any property reported which he deems to have a value less than the cost of giving notice and holding sale, or he may, if he deems it desirable because of the small sum involved, postpone taking possession until a sufficient sum accumulates. Unless the holder of the property is notified to the contrary within one hundred twenty days after filing the report required under section 44-361, the commissioner shall be deemed to have elected to receive the custody of the property.

44-372. Examination of records

A. The commissioner may at reasonable times and upon reasonable notice examine the records of any person that relate to property that has been reported pursuant to this chapter.

B. If any person refuses to permit the commissioner to examine such records, the commissioner may request the attorney general to commence an action in the superior court to enforce the examination.

44-373. Proceeding to compel delivery of abandoned property.

If any person refuses to deliver property to the commissioner as required under this chapter, he shall request the attorney general to bring an action in the superior court to enforce such delivery.

44-374. Penalties

A. Any person who wilfully fails to render any report or perform other duties required under this chapter shall be punished by a fine of not less than twenty-five nor more than three hundred dollars.

B. Any person who wilfully refuses to pay or deliver abandoned property to the commissioner as required under this chapter shall be punished by a fine of not less than twenty-five dollars nor more than one thousand dollars, or imprisonment in the county jail for not more than six months, or by both such fine and imprisonment.

44-375. Division of unclaimed property; rules and regulations

A. There shall be a division of unclaimed property which shall be administered by the estate tax commissioner. The commissioner together with the assistant estate tax commissioner shall administer this chapter.

B. The commissioner is hereby authorized to make necessary rules and regulations to carry out the provisions of this chapter.

44-376. Effect of laws of other states; certain funds exempted

A. This chapter shall not apply to any property that has been presumed abandoned or escheated under the laws of another state prior to the effective date of this chapter.

B. All funds the disposition of which is provided for under the terms of section 8, article 11, of the constitution of Arizona, shall be exempt from the provisions of section 44-367, and shall be deposited, when collected under the provisions of this chapter or otherwise, in the permanent school fund.

44-377. Uniformity of interpretation

This chapter shall be so construed as to effectuate its general purpose to make uniform the law of those states which enact it.

44-378. Short title

This chapter may be cited as the Uniform Disposition of Unclaimed Property Act.

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STATE OF NEW YORK, STATE OF FLORIDA, STATE OF OREGON, COMMONWEALTH OF VIRGINIA, and THE WESTERN UNION TELEGRAPH COMPANY,

Defendants

BRIEF IN SUPPORT OF ANSWER BY STATE OF ARIZONA

GARY K. NELSON
Attorney General
of Arizona
159 State Capitol Building
Phoenix, Arizona 85007

LEONARD M. BELL
Of Counsel

STATEMENT OF POSITION
OF STATE OF ARIZONA

The State of Arizona by its adoption of the Uniform Disposition of Unclaimed Property Act in a form substantially the same as approved by The National Conference on Uniform Laws, has a defense which is similar or identical to that of defendant, The State of Florida. Therefore, the State of Arizona adopts for its brief in support of its answer the brief filed by the State of Florida in support of its answer.

GARY K. NELSON
Attorney General
of Arizona

LEONARD M. BELL
Of Counsel

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Defendants

PROOF OF SERVICE

I, GARY K. NELSON, Attorney General of the State of Arizona, hereby certify that I am the attorney for the State of Arizona, that I am a member of the Bar of the Supreme Court of the United States,

and that on the day of , 1970, I served copies of the foregoing Motion to Intervene as Defendant, Proposed Answer and Brief in Support of the Answer, on each of the parties by depositing such copies, air mail postage prepaid, in a United States Post Office, addressed as follows:

1. State of Pennsylvania

The Honorable William C. Sennett
Attorney General of Pennsylvania
The Capitol
Harrisburg, Pennsylvania

2. State of New York

The Honorable Louis J. Lefkowitz
Attorney General of the State of New York
The Capitol
Albany, New York

3. State of Oregon

The Honorable Lee Johnson
Attorney General of the State of Oregon
The Capitol
Salem, Oregon

4. Commonwealth of Virginia

The Honorable Robert Y. Button
Attorney General of the Commonwealth
of Virginia
The Capitol
Richmond, Virginia

5. State of Florida

The Honorable Earl Faircloth
Attorney General of the State of
Florida
Tallahassee, Florida

6. The Western Union Telegraph Company

John M. Evans, Esq.
Vice-President and General Counsel
The Western Union Telegraph Company
60 Hudson Street
New York, N. Y.

GARY K. NELSON
Attorney General
of Arizona

SUPREME COURT, U. S.
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COMMONWEALTH OF PENNSYLVANIA, et al.,

Plaintiffs,

v.

STATE OF NEW YORK, et al.,

Defendants.

REPORT OF SPECIAL MASTER ON APPLICATIONS OF THE STATES OF CALIFORNIA, ARIZONA, AND INDIANA FOR LEAVE TO INTERVENE

John F. Davis,

Special Master

Washington, D. C. · THIEL PRESS · 202 · 393-0625

IN THE

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COMMONWEALTH OF PENNSYLVANIA, et al.,

Plaintiffs,

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STATE OF NEW YORK, et al.,

Defendants.

REPORT OF SPECIAL MASTER ON APPLICATIONS OF THE STATES OF CALIFORNIA, ARIZONA, AND INDIANA FOR LEAVE TO INTERVENE

By order of the Court dated October 12, 1970, the undersigned was appointed Special Master in the above entitled matter. By orders of November 23, 1970, and January 25, 1971, the Court referred to the Special Master, petitions for leave to intervene as parties plaintiff by the States of California and Indiana and as a party defendant by the State of Arizona. Pursuant to the aforesaid orders the Special Master submits the following report.

FACTS

So far as is necessary for the disposition of these motions, the complaint and answers make it appear that The Western Union Telegraph Company, a New York Corporation, holds material amounts of money received by it for the transmission of telegraphic money orders which for one reason or another aborted. The amount involved is not now established, but it appears to be in the neighborhood of $1,500,000 for orders purchased on or before December 31, 1962. That date was used in Pennsylvania's complaint because it fits with the seven year period fixed in its escheat statute (Penn. Act of May 2, 1889, P.L. 66, Sec. 1, as amended by Act of July 29, 1953, P.L. 986, Sec. 1). Apparently most of this $1,500,000, estimated in one survey at 78.1%, consisted of orders as to which the payees could not be found and the amounts were therefore to be refunded to the senders, but they also could not be found. The survey indicated that of the remaining 21.9% about half constituted drafts issued to the payees which were not submitted for payment and the remainder of refund drafts to the senders which also were not cashed.

Pennsylvania alleged that of the total of $1,500,000, about $100,000 resulted from purchases of telegraphic money orders in Pennsylvania and that under its escheat law Pennsylvania is entitled to all of that sum. It asserts that there are conflicting claims by Florida, Oregon, Virginia, and New York and, inferentially, by other states. Pennsylvania asked the Court to issue an injunction barring escheat by the states named as defendants and restraining Western Union from releasing the money to them pending further orders of the Court and prayed for what appears to the Special Master to be in the nature of a declaratory judgment spelling out the legal rights of the parties. None of the defendants opposed Pennsylvania's motion for leave to file the complaint and on June 15, 1970, the Court granted the motion. No action has been taken on the request for an

injunction, which New York said was not necessary since it did not intend to institute any such action.

The State of Connecticut filed a motion for leave to intervene as a party plaintiff, alleging that approximately $100,000 of the money orders in issue had been purchased in Connecticut and that as to that amount it was fair and equitable that the money escheat to Connecticut as against the claims of the defendant states. The Court granted this motion on October 12, 1970, but Connecticut has not yet filed a complaint.

Each of the defendant states, Florida, New York, Oregon and Virginia, filed an answer to the complaint, asserting claims to the money involved conflicting with the claim of Pennsylvania, and, in some instances, conflicting with each other. The Western Union Telegraph Company filed an answer denying sufficient knowledge or information to form a belief as to the correctness of the figures contained in the complaint, but, in effect, admitting the existance of the conflicting claims.

PETITIONS TO INTERVENE

The motion of the State of California for leave to intervene as a party plaintiff, which has been referred to the Special Master for his recommendation, is substantially the same as the motion submitted by Connecticut and granted by the Court. California asserts that of the money in dispute approximately $100,000 originated in the purchase of telegraphic money orders in California and that it is fair and equitable that that sum escheat to California as against the claims of other States.

The State of Indiana's motion for leave to intervene as a party plaintiff alleges that under its statutes it is entitled to custodial taking or escheat of money received for money orders originating in Indiana when payment has not been made by cash or draft to the sendee, or a refund made by cash or draft to the sender. In cases where drafts have been

issued, its statutes entitle it to the money where the address of the payee on the draft is in Indiana or, if there is no last known address of such payee, where the draft was issued in Indiana. Indiana asserts that its claim is "within the ambit of the declaratory judgment prayed for by the Commonwealth of Pennsylvania." It asserts that a controversy exists between Indiana and all of the defendants opposed to the distribution provided by its statutes and that no party heretofore joined or having intervened can protect Indiana's interest.

The motion of the State of Arizona to intervene as a party defendant submits a proposed answer to the complaint to be filed if its motion is granted. From this answer it appears that the governing statute in Arizona is said to be substantially the same as the Uniform Disposition of Unclaimed Property Act approved by the National Conference on Uniform Laws in 1955. Under that law Arizona claims the funds represented by money orders sent to an Arizona destination or those sent to a payee whose last known address shown by the books of the debtor is in Arizona. Arizona states that its position is similar or identical to that of Florida which also has the uniform law.

With minor exceptions, each of the parties to this proceeding has stated that it has no objection to the requested interventions.[1]

RECOMMENDATION OF THE SPECIAL MASTER

The Special Master recommends that each of the motions for leave to intervene be granted. It seems clear that the same type of controversy exists between these three states and the states claiming in opposition to them as existed between the original parties to the case. The position of

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[1]The files of the Special Master do not show that Oregon has taken a position with respect to the motions of Arizona or Indiana, or that Connecticut has taken a position on Arizona's motion or Pennsylvania on Indiana's.

California is the same as that of Connecticut whose motion for leave to intervene was granted by the Court. The position of Arizona appears to be the same as that of Florida. Although the position of Indiana differs somewhat from each of the others, the presence of real controversy seems clear.

It may well be that each of the other forty-one states not appearing in this proceeding also have an interest, large or small, in the outcome. Presumably most of them are willing to leave the matter to the determination of the Court on the basis of the representations of their sister states. However, if some of them desire to intervene at this time, it does not seem to the Special Master necessary that the proceedings before him be delayed to await action on such applications. Unless instructed to the contrary, the Special Master will proceed to hear the present parties and the present intervenors, if their motions are granted. He will, of course, be receptive to the views of other States as *amici curiae*.

It is recommended that the motions for leave to intervene of the States of California, Arizona and Indiana be granted.

Respectfully submitted,

John F. Davis
Special Master

February, 1971

Supreme Court, U.S.
FILED
APR 22 1971
E. ROBERT SEAVER

IN THE

Supreme Court of the United States

OCTOBER TERM, 1970
No. 40 Original

COMMONWEALTH OF PENNSYLVANIA,
Plaintiff,

v.

STATE OF NEW YORK, STATE OF FLORIDA, STATE OF OREGON, COMMONWEALTH OF VIRGINIA, and THE WESTERN UNION TELEGRAPH COMPANY,
Defendants.

OBJECTIONS OF NEW YORK TO MOTION FOR LEAVE TO FILE BRIEF AMICUS CURIAE

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Defendants.

OBJECTIONS OF NEW YORK TO MOTION FOR LEAVE TO FILE BRIEF AMICUS CURIAE

Respondent, the State of New York, hereby files objection to the motion by the American Express Company for leave to file a brief amicus curiae. Respondent's objection is based upon the following grounds:

1. American Express Company acknowledges that it is seeking a determination which would apply equally to its holdings of abandoned or escheated property. To support this purpose, it has submitted a unilateral statement of facts respecting its travelers checks and money orders. This is in sharp contrast to the extensive and carefully considered agreed statement of facts to which all parties in this action are or will be participants. Although American Express Company disavows an intention to become a party defendant or to have its instruments placed

directly in adjudication, this is the inescapable and ultimate effect of its application. It would be a party defendant in all but name, with the anomalous result that it could present its factual statement and factual discussion without any reasonable possibility on the part of this respondent or any other party making any response or objection.

2. This position of American Express Company, we submit, invokes a theory of ancillary jurisdiction that is unsupportable. The original jurisdiction of the United States Supreme Court does not extend to suits by private corporations or individuals against the various states. United States Constitution, Article III, Section 2, Article XI of the Amendments to the Constitution; *Duhne* v. *New Jersey,* 251 U. S. 311 (1919); *Hans* v. *Louisiana,* 134 U. S. 1 (1890). In these circumstances the holding in *Utah* v. *United States,* 394 U. S. 89, 96 (1968), declining to permit intervention, is compelling. There it was said:

> "While Morton doubtless wishes to have us settle its additional claims, we decline to permit intervention for the sole purpose of permitting a private party to introduce new issues which have not been raised by the sovereigns directly concerned."

3. Rule 42(3) of the Rules of the Supreme Court of the United States provides that on a motion for leave to file a brief amicus curiae, in addition to a statement of the movant's interest, there should be a statement of the "facts or questions of law that have not been, or reasons for believing that they will not be, adequately presented by the parties * * *." There is no such showing here and we suggest that there cannot be any such showing.

For each and all of the foregoing reasons, the motion of the American Express Company to file a brief amicus curiae should be denied.

New York, New York, April 20, 1971.

Respectfully submitted,

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